

## **SB404 (Lind)**

### **"An Act Clarifying Liability for Firefighters"**

Hearing: 3/27/07 0800 House Judiciary Committee

#### **Background:**

Wildland firefighting is a risky business. Last year, 27 wildland firefighters were killed either in route to or fighting wildfires. Many more received minor to severe injuries. In addition, fighting wildfires routinely requires firefighters to enter upon and carry out suppression activities on private lands, which is the source of some conflict.

State and local government wildland firefighters are indemnified and ensured legal defense against civil actions arising from a wildfire by Sec. 2-9-305 MCA, which states:

**2-9-305. Immunization, defense, and indemnification of employees.** (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

Wildland firefighters are *not* currently given similar protection against criminal charges arising from a serious injury or death on a wildfire.

In July 2001, the "Thirty Mile Fire" on the Wenatchee National Forest in Washington state killed four wildland firefighters. Soon thereafter, the U.S. Congress passed a bill requiring an investigation of all fatalities on U.S. Forest Service wildfires by the Office of Inspector General (OIG). In 2003, the Cramer Fire on the Salmon-Challis fire in Idaho killed two firefighters. Pursuant to the federal legislation, OIG conducted an investigation into the fire, and for the first time, the specter of criminal charges against fire managers was raised. Settlements were reached which prevented criminal charges from being filed.

However, in December 2006, criminal charges were filed by federal prosecutors against a crew boss on the Thirty Mile Fire of 2001. These charges have had a chilling effect upon wildland firefighters across the country, as they question whether similar charges could be brought against them in the event of a fatality on a wildfire they are managing. This prospect is jeopardizing the ability for agencies to adequately staff fire crews and incident management teams to effectively manage future wildfire seasons. It also threatens to have every firefighter to seek legal counsel whenever an accident occurs on a wildfire that results in serious injury or death, which affects agencies' abilities to discover causal factors on the incident.

The state of Montana relies heavily on state and local government firefighters and managers to protect over 50 million acres of state and private land from wildfire. To continue recruiting and retaining firefighters in state and local government fire departments across the state, it is essential to ensure that Montana wildland firefighters will not be charged criminally by a Montana county prosecutor in the event of a fatality on a wildfire they are managing, or legally defended if they are. SB404 is designed to provide that certainty.

#### **What SB404 Does:**

- Indemnifies state and local government firefighters for actions fighting fires other than those committed with demonstrable criminal intent;
- Provides legal representation to DNRC firefighters for any criminal prosecution arising from actions on a wildfire.

#### **Legislative History:**

- Issue identified during HJ10 workgroup actions, approved as EQC bill Fall 2006
- Originally part of SB145 (Shockley - State Fire Policy), but separated due to supermajority vote requirements
- Senate Judiciary Committee Vote: Unanimous 12-0
- Full Senate: Unanimous 50-0

#### **Proponents / Contacts:**

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#### **Interested Parties:**

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